

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

**OA/021/66/2019 &
MA/21/54/2019**

Dated: 25.01.2019

Between:

1. Natendra Kumar,
S/o. Dilip Kumar, aged about 43 years,
Occ: Electrical Signal Maintainer (ESM) (Group C),
in the O/o Senior Section Engineer,
South Central Railway, Guntakal Division, Adoni,
R/o. Flat No.203/A, West Railway Colony,
Raichur, Karnataka State.

2. Jay Shankar Kumar,
S/o. Late Ram Briksh Singh,
Aged about 36 years,
Occ: Electrical Signal Maintainer (ESM) (Group C),
In the O/o the Senior Section Engineer,
South Central Railway, Vijayawada Division, Gudur,
R/o. Railway Quarter No.111/c, Near Railway Institute,
Gudur 524 101.

1 Applicants

A N D

Union of India, rep. by

1. The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.

2. The Principal Chief Personnel Officer,
Rail Nilayam, South Central Railway,
Secunderabad.

3. The Divisional Railway Manager,
South Central Railway,
Vijayawada Division,
Vijayawada.

... Respondents

Counsel for the applicants : Mr. K. Siva Reddy

Counsel for the respondents : Mr. S.M. Patnaik,
SC for Railways.

CORAM:

***Hon'ble Mr. Justice R. Kantha Rao, Member (J)
Hon'ble Mr. B.V.Sudhakar, Member (A)***

ORAL ORDER

[Per Hon'ble Mr. Justice R. Kantha Rao, Member (J)]

Heard Shri K. Siva Reddy, learned counsel appearing for the applicants and Shri S.M. Patnaik, learned Standing Counsel for Railways appearing for the Respondents.

2. MA for filing joint application is allowed.

3. The applicants are Electrical Signal Maintainers I (ESM). Both of them applied for inter-zonal transfer to Mogalsarai and Dhanapur Divisions in East Central Railway, Hajipur on 12.9.2011 & 10.11.2008 respectively. Their applications were forwarded to the East Central Railway, Hajipur on 04.2.2014 and the East Central Railway accepted their requests and agreed to take them to their Divisions on inter-zonal transfer. There are several other employees like the applicants in the present O.A. Some inter-zonal transfers were given effect to and some were not. Aggrieved by the same, some of the employees whose requests for inter-zonal transfers were considered but were not relieved, approached the Tribunal by filing O.A. Nos/020/258 to 262, 272, 390 to 392, 444 to 448, 559, 560, 1080, 1081 & 1129 to 1132/2015. The Tribunal disposed of the O.As on merits by a common order dated 21.4.2016 and directed the respondent Railways to relieve the applicants therein within the time prescribed in the said order. Aggrieved by the same, the respondents filed Writ Petition No.31544/ 2016 & batch. The Writ Petitions were dismissed by the Division Bench of the

Honorable High Court by order dated 31.10.2017 confirming the order passed by the Tribunal and directed the Railway administration to effect the inter-zonal transfers in respect of the respondents therein by 28.2.2018 by relieving them to enable them to join in their transferred places. To facilitate the respondents in the Writ Petition, the Railway Recruitment Board was further directed to complete the process of recruitment by 31.1.2018. The applicants in the instant O.A approached the Tribunal praying for the same relief. Their grievance is that even though more than 4 years have elapsed, their inter-zonal transfers were not given effect to and they were not relieved from their respective places to enable them to join in their transferred places.

4. The respondents contended as follows:-

i) The applications of the employees are registered basing on zonal priority. A decision was made to relieve the candidates only after the position is improved since Electrical Signal Maintainers post is a sensitive safety category directly connected with train operations. They refuted the contentions of the applicants that the East Central Railway is still willing to accommodate the applicants. According to the respondents, the no objection given is conditional and its validity period is already over. It is further contended by the respondents that the applicants have no right for inter-zonal transfer and in the exigencies of service; their requests for inter-zonal transfers can be rejected. According to the respondents, the applicants, have no claim as perspective right for transfer to another Railway or another establishment and, therefore, according to the respondents, it is not mandatory on their part to relieve the applicants.

ii) Nextly, it is submitted that the Railway Recruitment Board had supplied 383 papers of Electrical Signal Maintainers but 167 had not joined the post. Therefore, action is on hand to convince the Railway Recruitment Board for some more RRB papers for Electrical Signal Maintainers. It is submitted that while appreciating the grievance of the applicants/ employees, the respondents are bound to look after the safety of the travelling public rather than giving preference to individual needs. Drawing a distinction between Station Master category and Electrical Signal Maintainers category it is stated that Electrical Signal Maintainers are of vital safety category where they have to work in the running train for certain distance whereas Station Master works in the station attending operational duties. The pay levels are also said to be different and, therefore, according to the respondents, both categories cannot be compared with each other. In Station Master's case, the version of the respondents seems to be that the Hon'ble High Court had directed the Railway Recruitment Board to supply papers to Railway administration and the dictum laid down will not be applicable in the case of Electrical Signal Maintainers.

iii) It is further submitted that under Employment Notice dated 3/2015, Railway Recruitment Board had allotted 383 papers out of which 216 had joined and the R.R.B. has not given any replacement. On the other hand there are 950 vacancies in the Guards category as on date. Thus, according to the respondents, relieving the applicants who are Electrical Signal Maintainers would cause operational hazards and endanger the safety of general public.

iv) Lastly, it is submitted that ensuring safety is paramount function of Indian Railways which cannot be compromised. Therefore, relieving of Electrical Signal Maintainers will jeopardize the travelling public.

Contending as above, the respondents sought to dismiss the O.A.

5. The main contention of the respondent Railways appears to be that if the applicants, who are Electrical Signal Maintainers are relieved, the safety of general public would be in jeopardy and, therefore, they prayed not to grant any direction to relieve the Electrical Signal Maintainers.

6. Before proceeding to dispose of this O.A, the main grounds on which the Division Bench of the Hon'ble High Court dismissed the Writ Petitions are required to be noticed. In the earlier O.A.s against which Writ Petitions were filed, the respondent Railways put forth the same contentions which are now taken in the instant O.A. As the applicants in the present case the applicants in those cases also contended that the delay in relieving them would jeopardize their career interest in the Railways to which they have sought transfer. In this context, it requires to be noticed that though the Railways have taken a decision to effect inter-zonal transfers basing on a priority list and in a time bound manner, the cases of some juniors were considered ignoring the requests of seniors. This has been made out from the pleadings of both the parties and there is no dispute about the said fact and the said issue needs no illustration. The Division Bench of the Hon'ble High Court repelled the contention of the respondent Railways that the applicants have no right for transfer to another Railway or another establishment. The

Division Bench made an observation that there is always a ground for not relieving the respondents therein even after three years of the transfer orders. The findings recorded by the Division Bench of the High Court in para 9 & 10 are as follows:

9. In the cases on hand, it is not the case of the Administration that the requests of the respondents for Zonal transfer were liable to be rejected. Their requests were already accepted. The respondents did not go to the Tribunal seeking a positive *mandamus* directing the Railway Administration to transfer them from one zone to another. If they were seeking a transfer through Court order, the Administration may be entitled to put Rule 226 of the Indian Railway Establishment Code.

10. But once their requests for Zonal transfers have been accepted, the same cannot be kept in cold storage. If we have a look at the time line of events, it could be seen that by the Circular dated 2.11.2005, the Administration was directed to draw a time-bound programme. Exactly a period of 12 years has now passed from the date of the said Circular. No time-bound programme has been chalked out by the Administration. The Circular also mandates that existence of vacancies need not deter the implementation of the orders of transfer. Therefore, the Tribunal was right in allowing the applications of the contesting respondents.

Therefore, the same contentions which are advanced in the present O.A by the respondents, were urged before the Hon'ble High Court. The Hon'ble High Court, considering all the facts and circumstances, passed the above mentioned order.

7. The learned counsel appearing for the applicants contended that if the inter-zonal transfers are not given effect and the applicants are not relieved, career prospects of the applicants, education of their children and other family issues will be adversely affected. They also brought to our notice the fact that

the applicants agreed to take up the bottom most seniority. Therefore, any further delay in effecting the inter-zonal transfers will jeopardize their prospects.

8. On the other hand, learned Standing Counsel appearing for the respondents contended that if the applicants are directed to be relieved, it would endanger public safety and cause a lot of trouble for the Railway administration. The same contention in respect of the Station Masters was advanced before the Hon^{ble} High Court. But the Hon^{ble} High Court did not accept the same. The inter-zonal transfers of several cadres have been accepted by the respondent Railways and, therefore, we think it not proper to draw a distinction between various categories of employees and the Railway Administration is under duty to give effect to the said inter-zonal transfers by relieving the applicants.

9. Shri S.M. Patnaik, learned Standing Counsel appearing for the Respondent Railways contended that the applicants waited for the decision of the Hon^{ble} High Court in the aforementioned Writ Petitions and filed the present O.A. As the applicants are not parties to the said O.As, they have not approached the Tribunal at appropriate time for redressal of their grievance, their original applications ought not to have been admitted by the Tribunal on account of the bar of limitation which is set out u/S 21 of the Administrative Tribunals Act. According to the learned counsel, after the decision for inter-zonal transfers was taken, the applicants ought to have approached the Tribunal within the period prescribed u/S 21 of the Tribunals Act. The learned Standing counsel also relied on a decision of the Hon^{ble} Supreme

Court in S.S. Balu & Another vs State of Kerala & Others dated 13.1.2009

wherein the Supreme Court in para 18 of the judgement held as follows:

ö18. It is also well settled principle of law that ödelay defeats equityö. Government Order was issued on 15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgement. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.

In New Delhi Municipal Council v. Pan Singh and Ors. (2007) 9 SCC 278, this Court held:

ö16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant facts for exercise of equitable jurisdiction.ö

10. The judgement relied on by the learned Standing Counsel, in our view, is not applicable to the facts of the present case. The said decision relates to appointment and the Supreme Court with reference to the facts of the case took a view that the applicants only after knowing about the decision rendered by the High Court in favour of some other candidates approached the High Court and, therefore, they are not entitled for the relief which was given to the applicants before the High Court. The fact situation in the case before the Supreme Court and in the present OA is distinguishable. In the case before the Supreme Court, the appellants therein sought a *mandamus* in respect of their right to appointment. In the present O.A, the request of the applicants for their inter-zonal transfer was already considered by the Railway administration and they approached the Tribunal as the same was not given effect to even after 4 years. Since the inter-zonal transfer of the applicants and other employees were sought to be given effect to by the Railway administration in a time bound manner basing on priority list, at no point of time the applicants in the instant case were rejected of their request for inter-zonal transfer. Since as per the policy of Railways, it has to be done in a time bound manner, the applicants waited for implementation and as it was not done within a reasonable time, they approached the Tribunal. Therefore, we are not inclined to accept the contention that the relief prayed for by the applicants in the present O.A. is barred by limitation u/S 21 of the Administrative Tribunals Act.

11. As regards the question whether the decision of the Division Bench of the Hon^{ble} High Court in the above Writ Petition applies to the applicants in the present case, we are of view that it applies to the Railways as well as the

Railway employees whose requests for inter-zonal transfers were approved and have been waiting for their release from their respective places.

12. We took notice of the statement of the learned Standing Counsel for the Respondents about the inconvenience that would be caused to the Railways in the event of relieving the applicants immediately. At the same time, we are conscious of the fact that the finalization of the relieving of the applicants cannot be put on hold by the Railways indefinitely and the Railway administration has to effect inter-zonal transfers within a reasonable time.

13. After rendering the aforementioned judgement by the Division Bench of the Hon^{ble} High Court, the Respondent Railways ought to have taken steps to relieve the employees whose requests for inter-zonal transfers are accepted. But the Railway administration only gave effect to the order passed by the Hon^{ble} high Court in the above batch of Writ Petitions.

14. In view of the foregoing discussion, we are of the view that a direction requires to be given to the respondent Railways to release the applicants so as to enable them to join in their respective transferred places pursuant to their inter-zonal transfers. Therefore, the respondents are directed to take steps to relieve the applicants to their transferred places within a period of six months from the date of receipt of this order.

15. The O.A is allowed to the extent indicated above. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (A)

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(JUSTICE R.KANTHA RAO)
MEMBER (J)